

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 16, 2006 - KL

Division: County Administrator

Bulk Item: Yes x No

Department: County Administrator

Staff Contact Person: Tom Willi

AGENDA ITEM WORDING: Approval of *Agreement for Sale and Purchase* of the property known as *Hickory House*, 5948 Peninsular Ave, Stock Island.

ITEM BACKGROUND:

Curtis Skomp, Agent for Coldwell Banker Commercial Schmitt Real Estate Co., has approached the County regarding the purchase of this property. This parcel can be used to allow public access to the waterfront. The parcel includes a restaurant with a liquor license and a commercial fish house license.

PREVIOUS RELEVANT BOCC ACTION:

At the July 19, 2006 BOCC meeting the Board directed the County Administrator to send a Letter of Intent to the property owner of the Hickory House.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST:

BUDGETED: Yes No X

COST TO COUNTY:

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL: Thomas J Willi
(Thomas J. Willi)

DOCUMENTATION: Included x Not Required

DISPOSITION:

AGENDA ITEM #

AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT is made this _____ day of _____, 2006, between **Melodye Reger** as "Sellers" whose address is _____ and the **BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, FLORIDA**, a political subdivision of the State of Florida, as "Purchaser", c/o Thomas Willi, County Administrator, 1100 Simonton Street, Room 2-205, Key West, Florida 33040.

1. In consideration of the mutual promises contained herein, Sellers hereby agree to sell to Purchaser the real property located in Monroe County, Florida, described below, together with all improvements, easements, rights and appurtenances ("Property"), in accordance with the provisions of this Agreement. This Agreement becomes legally binding upon execution by the parties but exercise of the option is subject to approval by Purchaser and is effective only if Purchaser gives written notice of exercise to Seller.

2. DESCRIPTION OF PROPERTY. The property which the Sellers agree to sell and the Purchaser agrees to buy pursuant to the terms of this Agreement is that property situated on Stock Island, Monroe County, Florida, and more particularly described as:

5948 Peninsular Avenue, Stock Island, Key West, Fl. 33040 aka 5948 Maloney Avenue, Stock Island, Key West, Fl. 33040

3.A. TOTAL PURCHASE PRICE. The total purchase price ("Total Purchase Price") for the Property is **Three Million, Seven Hundred Fifty Thousand Dollars (\$3,750,000)** which will be paid by Purchaser at closing. Seller hereby authorizes Purchaser to issue a County check or warrant directly to an escrow agent who is authorized by law to receive such payment, and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. This Total Purchase Price presumes that the Property contains at least 24,375 square feet of land and approximately 4,495 square feet of building, to be confirmed by the Survey, as provided in paragraph 5, boat docks built prior to 1954, and a licensed restaurant with alcoholic beverage license. The Total Purchase Price is subject to adjustment in accordance with paragraph 3.B. The determination of the final Total Purchase Price can only be made after the completion and approval of the survey required in paragraph 5 and receipt of two (2) real estate appraisals. This Agreement is contingent upon approval of Total Purchase Price by Purchaser and upon confirmation that the Total Purchase Price is not in excess of the final maximum approved purchase price of the Property as specified by the Board of County Commissioners for Monroe County at an advertised meeting of the Board ("Maximum Approved Purchase Price"), which shall be determined upon receipt of two real estate appraisals as required by State law.

Should Purchaser's funds not be available for any reason, Purchaser or Seller may elect to terminate this Agreement by written notice to the parties without liability to any party.

Conveyance of the Property in fee simple from Seller to Purchaser will take place at the closing, in exchange for the payments to be made to Seller at closing as set forth above in this paragraph 3.A.

3.B. ADJUSTMENT OF TOTAL PURCHASE PRICE. If, prior to closing, Purchaser determines that the Total Purchase Price stated in paragraph 3.A. exceeds the final Maximum Approved Purchase Price of the Property, the Total Purchase Price will be reduced to the final Maximum Approved Purchase Price of the Property. If the final adjusted Total Purchase Price is less than 100% of the Total Purchase Price stated in paragraph 3.A. because of a reduction in the Maximum Approved Purchase Price of the Property, Seller shall, in his sole discretion, have the right to terminate this Agreement and neither party shall have any further obligations under this Agreement. If Seller elects to terminate this Agreement, Seller shall provide written notice to Purchaser of his election to terminate this Agreement within 10 days after Seller's receipt of written notice from Purchaser of the final adjusted Total Purchase Price. In the event Seller fails

to give Purchaser a written notice of termination within the aforesaid time period from receipt of Purchaser's written notice, then Seller shall be deemed to have waived any right to terminate this Agreement based upon a reduction in the Total Purchase Price stated in paragraph 3.A.

4.A. ENVIRONMENTAL SITE ASSESSMENT. Seller shall, at Seller's sole cost and expense and at least 30 days prior to the Option Expiration Date, furnish to Purchaser an environmental site assessment of the Property which meets the standard of practice of the American Society of Testing Materials ("ASTM"). Seller shall use the services of competent, professional consultants with expertise in the environmental site assessing process to determine the existence and extent, if any, of Hazardous Materials on the Property. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law (as hereinafter defined in paragraph 4.B.). The examination of hazardous materials contamination shall be performed to the standard of practice of the ASTM. For Phase I environmental site assessment, such standard of practice shall be the ASTM Practice E 1527. If the Findings and Conclusions section of the assessment reports evidence of recognized environmental conditions, then a Phase II Environmental Site Assessment shall be performed to address any suspicions raised in the Phase I environmental site assessment and to confirm the presence of contaminants on site. The environmental site assessment shall be certified to Purchaser and the date of certification shall be within 45 days before the date of closing. Purchaser shall reimburse Seller for cost of the environmental site assessment, not to exceed \$8,000.00, upon Seller's submission of the necessary documentation to Purchaser which evidences payment in full of the environmental site assessment costs by Seller or Purchaser may, at its own expense, obtain the environmental assessment and give notice to Seller that Seller's obligations under this paragraph are eliminated.

4.B. HAZARDOUS MATERIALS. In the event that the environmental site assessment provided for in paragraph 4.A. confirms the presence of Hazardous Materials on the Property, Purchaser, at its sole option, may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should Purchaser elect not to terminate this Agreement, Seller shall, at his sole cost and expense and prior to the exercise of the option and closing, promptly commence and diligently pursue any assessment, clean up and monitoring of the Property necessary to bring the Property into full compliance with any and all applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials ("Environmental Law"). However, should the estimated cost of clean up of Hazardous Materials exceed a sum which is equal to 1% of the Total Purchase Price as stated in paragraph 3.A., Seller may elect to terminate this Agreement and no party shall have any further obligations under this Agreement.

5. SURVEY. Seller shall, at Seller's sole cost and expense and not less than 35 days prior to the Option Expiration Date, deliver to Purchaser a current boundary survey of the Property prepared by a professional land surveyor licensed by the State of Florida. The Survey shall be certified to Purchaser and the title insurer and the date of certification shall be within 90 days before the date of closing, unless this 90 day time period is waived by Purchaser and by the title insurer for purposes of deleting the standard exceptions for survey matters and easements or claims of easements not shown by the public records from the owner's title policy. If the Survey shows any encroachment on the Property or that improvements intended to be located on the Property encroach on the land of others, the same shall be treated as a title defect. Purchaser shall reimburse Seller for the cost of Survey, not to exceed \$15,000.00, upon Seller's submission of the necessary documentation to Acquiring Agency which evidences payment in full of the Survey costs by Seller.

6. TITLE INSURANCE. Seller shall, at Seller's sole cost and expense and at least 35 days prior to the Option Expiration Date, furnish to Purchaser a marketable title insurance commitment, to be followed by an owner's marketable title insurance policy (ALTA Form "B") from a title insurance company, insuring marketable title to the Property in the amount of the Purchase Price. Seller shall require that the title insurer delete the standard exceptions of such policy referring to: (a) all taxes, (b) unrecorded rights or claims of parties in possession, (c) survey matters, (d) unrecorded easements or claims of easements, and (e) unrecorded mechanics' liens. Purchaser shall reimburse Seller for Seller's cost for the owner's title insurance policy required hereunder. Purchaser's reimbursement shall not exceed an amount which is equal to the minimum promulgated rate permitted by the Florida Insurance Commissioner's rules and regulations. Purchaser shall not be required to reimburse Seller until Seller has submitted the necessary documentation to Purchaser

which evidences payment in full of the title insurance cost by Seller and until the final owner's title insurance policy has been received and Purchaser. This reimbursement is contingent upon a sale of the Property to Purchaser.

7. DEFECTS IN TITLE. If the title insurance commitment or survey furnished to Purchaser pursuant to this Agreement discloses any defects in title which are not acceptable to Purchaser, Seller shall, within 90 days after notice from Purchaser, remove said defects in title. Seller agrees to use diligent effort to correct the defects in title within the time provided therefore, including the bringing of necessary suits. If Seller is unsuccessful in removing the title defects within said time or if Seller fails to make a diligent effort to correct the title defects, Purchaser shall have the option to either: (a) accept the title as it then is with a reduction in the Total Purchase Price by an amount determined by Purchaser, (b) accept the title as it then is with no reduction in the Total Purchase Price, (c) extend the amount of time that Seller has to cure the defects in title, or (d) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement.

8. INTEREST CONVEYED. At closing, Seller shall execute and deliver to Purchaser a warranty deed, conveying marketable title to the Property in fee simple free and clear of all liens, reservations, restrictions, easements, leases, tenancies and other encumbrances, except for those that are of record and acceptable encumbrances in the opinion of Purchaser and do not impair the marketability of the title to the Property.

9. PREPARATION OF CLOSING DOCUMENTS. Upon execution of this Agreement, Seller shall submit to Purchaser a properly completed and executed beneficial interest affidavit and disclosure statement as required by Sections 286.23, and 380.08(2), Florida Statutes. Seller shall prepare the deed described in paragraph 8. of this Agreement, Seller's closing statement, the title, possession and lien affidavit certified to Purchaser and title insurer in accordance with Section 627.7842, Florida Statutes, and an environmental affidavit. All prepared documents shall be submitted to Purchaser for review and approval at least 30 days prior to the Option Expiration Date.

10. PURCHASER REVIEW FOR CLOSING. Purchaser will approve or reject each item required to be provided by Seller under this Agreement within 30 days after receipt by Purchaser of all of the required items. Seller will have 30 days thereafter to cure and resubmit any rejected item to Purchaser. In the event Seller fails to timely deliver any item, or Purchaser rejects any item after delivery, Purchaser may in its discretion extend the Option Expiration Date.

11. EXPENSES. Seller will pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the deed described in paragraph 9 of this Agreement and any other recordable instruments which Purchaser deems necessary to assure good and marketable title to the Property. Except as provided in this Section 11 or elsewhere in this Agreement, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

12. TAXES AND ASSESSMENTS. All real estate taxes and assessments which are or which may become a lien against the Property shall be satisfied of record by Seller at closing. In the event the Purchaser acquires fee title to the Property between January 1 and November 1, Seller shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of transfer, based upon the current assessment and millage rates on the Property. In the event the Purchaser acquires fee title to the Property on or after November 1, Seller shall pay to the county tax collector an amount equal to the taxes that are determined to be legally due and payable by the county tax collector.

13. CLOSING PLACE AND DATE. The closing shall be on or before 15 days after Purchaser exercises the option; provided, however, that if a defect exists in the title to the Property, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing shall occur either on the original closing date or within 60 days after receipt of documentation curing the defects, whichever is later. The date, time and place of closing shall be set by Purchaser.

14. RISK OF LOSS AND CONDITION OF REAL PROPERTY. Seller assumes all risk of loss or damage to the Property prior to the date of closing and warrants that the Property shall be transferred and conveyed to the Purchaser in the same or essentially the same condition as of the date of Seller's execution of this Agreement, ordinary wear and tear excepted. However, in the event the condition of the Property is altered by an act of God or other natural force beyond the control of Seller, Purchaser may elect, at its sole option, to terminate this Agreement and neither party shall have any further obligations under this Agreement. Seller represents and warrants that there are no parties other than Seller in occupancy or possession of any part of the Property. Seller agrees to clean up and remove all abandoned personal property, refuse, garbage, junk, rubbish, trash and debris from the Property to the satisfaction of Purchaser prior to the exercise of the option by Purchaser.

15. RIGHT TO ENTER PROPERTY AND POSSESSION. Seller agrees that from the date this Agreement is executed by Seller, Purchaser and its agents, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with the this Agreement. Seller shall deliver possession of the Property to the Purchaser at closing.

16. ACCESS. Seller warrants that there is legal ingress and egress for the Property over public roads or valid, recorded easements that benefit the Property.

17. DEFAULT. If Seller defaults under this Agreement, Purchaser may waive the default and proceed to closing, seek specific performance, or refuse to close and elect to receive the return of any money paid, each without waiving any action for damages, or any other remedy permitted by law or in equity resulting from Seller's default. In connection with any dispute arising out of this Agreement, including without limitation litigation and appeals, Purchaser will be entitled to recover reasonable attorney's fees and costs.

18. BROKERS. Seller warrants that no persons, firms, corporations or other entities are entitled to a real estate commission or other fees as a result of this Agreement or subsequent closing, except as accurately disclosed on the disclosure statement required in paragraph 9. Seller shall indemnify and hold Purchaser harmless from any and all such claims, whether disclosed or undisclosed. The parties represent and warrant to each other that, with the exception of a commission in the amount equal to six percent (6%) of the Purchase Price, to be paid by Seller to Coldwell Banker Commercial Schmitt Real Estate Co. (the "Broker"), such commission being due and payable only in the event the sale of the Property pursuant to this Agreement actually closes in accordance with the terms hereof and the Purchase Price is unconditionally paid to Seller, no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transaction contemplated by this Agreement. If any person (other than Broker) brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "Indemnified Party") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 18 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

19. RECORDING. This Agreement, or notice of it, may be recorded by Purchaser in the Official records of Monroe County.

20. ASSIGNMENT. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

21. TIME. Time is of essence with regard to all dates or times set forth in this Agreement.

22. **SEVERABILITY.** In the event any of the provisions of this Agreement are deemed to be unenforceable, the enforceability of the remaining provisions of this Agreement shall not be affected.

23. **SUCCESSORS IN INTEREST.** Upon Seller's execution of this Agreement, Seller's heirs, legal representatives, successors and assigns will be bound by it. Upon Purchaser's approval of this Agreement and Purchaser's exercise of the option, Purchaser and Purchaser's successors and assigns will be bound by it. Whenever used, the singular shall include the plural and one gender shall include all genders.

24. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties.

25. **WAIVER.** Failure of Purchaser to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect.

26. **AGREEMENT EFFECTIVE.** This Agreement or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until it has been executed by all of the parties hereto.

27. **ADDENDUM.** Any addendum attached hereto that is signed by the parties shall be deemed a part of this Agreement.

28. **NOTICE.** Whenever either party desires or is required to give notice unto the other, it must be given by written notice, and either delivered personally or mailed to the appropriate address indicated on the first page of this Agreement, or such other address as is designated in writing by a party to this Agreement.

29. **SURVIVAL.** The covenants, warranties, representations, indemnities and undertakings of Seller set forth in this Agreement shall survive the closing, the delivery and recording of the deed described in paragraph 8. of this Agreement and Local Government's possession of the Property.

THIS AGREEMENT IS INITIALLY TRANSMITTED TO THE SELLER AS AN OFFER. IF THIS AGREEMENT IS NOT EXECUTED BY THE SELLER ON OR BEFORE _____, 2006, THIS OFFER WILL BE VOID UNLESS THE PURCHASER, AT ITS SOLE OPTION, ELECTS TO ACCEPT THIS OFFER. THE EXERCISE OF THIS OPTION IS SUBJECT TO: (1) APPROVAL OF THIS AGREEMENT AND TOTAL PURCHASE PRICE BY PURCHASER, (2) CONFIRMATION THAT THE TOTAL PURCHASE PRICE IS NOT IN EXCESS OF THE FINAL MAXIMUM APPROVED PURCHASE PRICE OF THE PROPERTY, AND (3) LOCAL GOVERNMENT AND ACQUIRING AGENCY APPROVAL OF ALL DOCUMENTS TO BE FURNISHED HEREUNDER BY SELLER. THE PURCHASER'S PERFORMANCE AND OBLIGATION TO PAY UNDER THIS CONTRACT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE LEGISLATURE.

THIS IS TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

**Property Tax I.D.#: 00126210-000000 AGREEMENT FOR SALE AND PURCHASE
SIGNATURE PAGE 1 of 2**

SELLERS

Witness

By: _____

Witness

STATE OF Florida)
COUNTY OF Monroe)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006,
by _____. He/she is personally known to me or produced _____ as identification.

(NOTARY PUBLIC)
SEAL

Notary Public

(Printed, Typed or Stamped Name of
Notary Public)

Commission No.: _____

My Commission Expires: _____

Witness

Witness

**Property Tax I.D.#: 00126210-000000 AGREEMENT FOR SALE AND PURCHASE
SIGNATURE PAGE 2 of 2**

(SEAL)

Attest: DANNY L. KOLHAGE, CLERK

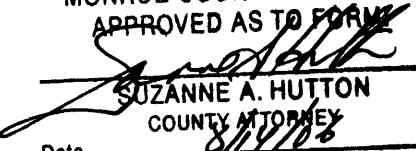
By: _____
Deputy Clerk

Approved as to Form
By: _____

Date: _____

**PURCHASER
MONROE COUNTY, FLORIDA**

By: _____
Mayor Charles "Sonny" McCoy

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 8/11/12

ADDENDUM
(IMPROVEMENTS/PURCHASER)

A. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This notice is being provided in accordance with Section 404.056(8), Florida Statutes. Purchaser may, at its sole cost and expense, have the buildings that will remain on the Property inspected and tested for radon gas or radon progeny by a qualified professional properly certified by the Florida Department of Health and Rehabilitative Services. If radon gas or radon progeny is discovered, Purchaser shall have the option to either: (a) accept the Property as it then is with no reduction in the Purchase Price or (b) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement.

B. Wood Destroying Organisms Inspection Report. Purchaser may, at its sole cost and expense, obtain a Wood Destroying Organisms Inspection Report made by a state licensed pest control firm showing the buildings that are to remain on the Property to be visibly free of infestation or damage by termites or other wood-destroying pests. If the report shows such infestation or damage, Purchaser shall have the option to either: (a) accept the Property as it then is with no reduction in the Purchase Price or (b) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement.

C. Maintenance of Improvements. Seller shall, if required by Purchaser, maintain the roofs, doors, floors, steps, windows, exterior walls, foundations, all other structural components, major appliances and heating, cooling, electrical and plumbing systems on all improvements that will remain on the Property in good working order and repair up to the date of closing. Purchaser may, at its expense, have inspections made of said items by licensed persons dealing in the repair and maintenance thereof. If the inspection reveals that any of the improvements that will remain on the Property are in need of repair, Purchaser shall have the option to either: (a) accept the Property as it then is with no reduction in the Purchase Price or (b) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement.

SELLERS

By: _____

Date signed by Seller

By: _____

Date signed by Seller

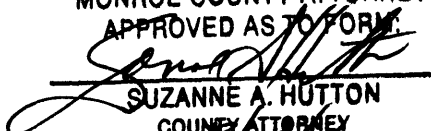
PURCHASER

MONROE COUNTY, FLORIDA

By: _____
Mayor Charles "Sonny" McCoy

Date signed by Purchaser

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM


SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 8/14/03